UNITED STATES OF AMERICA	)	
	)	
v.	)	**Prosecution Disclosure to the Defense**
	)	
Manning, Bradley E.	)	
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	**17 August 2012**
Fort Myer, Virginia 22211	)	

The United States responds to the Court's Order, dated 29 May 2012 as follows:

On 17 August 2012, the United States filed an *ex parte* motion requesting the Court consider that motion *in camera* and *ex parte* under MRE 505(g)(2) and to authorize redactions of portions of the Defense Intelligence Agency (DIA) records that neither involve investigation, damage assessment, or mitigation measures, nor are otherwise subject to discovery or production under Brady, RCM 701(a)(2), RCM 701(a)(6), or RCM 703(f). The United States requested the Court authorize redactions under MRE 505(g)(2)(A). See Enclosure. The United States seeks to protect information relating to intelligence activities and intelligence sources and methods, all within the national security interests of the United States.

ASHDEN FEIN
MAJ, JA
Trial Counsel

Enclosure
Government *ex parte* Motion (DIA) [unclassified redacted version]

APPELLATE EXHIBIT 257
PAGE REFERENCED:____
PAGE___OF___PAGES

[redacted]

UNITED STATES OF AMERICA	)	
	)	**Government *in camera* Motion**
v.	)	**for Authorization of Redactions of**
	)	**DIA Records**
Manning, Bradley E.	)	**under MRE 505(g)(2)**
PFC, U.S. Army,	)	
HHC, U.S. Army Garrison,	)	
Joint Base Myer-Henderson Hall	)	**17 August 2012**
Fort Myer, Virginia 22211	)	

RELIEF SOUGHT

(U) COMES NOW the United States of America, by and through undersigned counsel, respectfully requests this Court to: (1) consider this motion *in camera* and *ex parte* under Military Rule of Evidence (MRE) 505(g)(2); and (2) authorize redactions of portions of the Defense Intelligence Agency (DIA) records (hereinafter "records") under MRE 505(g)(2) that neither involve investigation, damage assessment, or mitigation measures, nor are otherwise subject to discovery or production under Brady, Rule for Courts Martial (RCM) 701(a)(2), RCM 701(a)(6), or RCM 703(f).

BURDEN OF PERSUASION AND BURDEN OF PROOF

(U) As the moving party, the United States has the burden of persuasion on any factual issue the resolution of which is necessary to decide the motion. RCM 905(c)(2). The burden of proof is by a preponderance of the evidence. RCM 905(c)(1).

FACTS

(U) On 22 June 2012, the Court ordered (hereinafter "Court Order") the prosecution to seek out and identify files regarding the accused that involve investigation, damage assessment, or mitigation measures, and to notify the Court with a status of whether it anticipates any government entity that is the custodian of classified evidence that is the subject of the Defense Motion to Compel will seek limited disclosure IAW MRE 505(g)(2) or claim a privilege IAW MRE 505(c) for the classified information under that agency's control.

(U) On 19 July 2012, the prosecution requested leave of the Court until 17 August 2012 (1) to notify the Court with a status of whether it anticipates the custodian of classified evidence will seek limited disclosure IAW MRE 505(g)(2) or claim a privilege IAW MRE 505(c) for the classified information under that agency's control; (2) to file notice IAW MRE 505(i)(2), if necessary; and (3) if necessary, to disclose such files regarding the Accused that involve investigation, damage assessment, or mitigation measures to the Defense or, submit them to the Court for in camera review under RCM 701(g) or for limited disclosure under MRE 505(g)(2) for Department of Defense (DoD) information classified collateral to "secret" and classified above

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the "secret" level or containing specialized control measures. See Appellate Exhibit (AE) CCXX.

(U) On 19 July 2012, the defense did not object to the prosecution's request for leave and the Court granted the request on the record at the Article 39(a).

[redacted]

WITNESSES/EVIDENCE

(U) The United States does not request any witnesses be produced for this motion. The prosecution requests that the Court consider enclosures listed at the end of this motion.

LEGAL AUTHORITY AND ARGUMENT

(U) If classified information is at issue in a court-martial, then the United States may agree to disclose the classified information to the defense under a protective order. See MRE 505(g)(1). Additionally, the United States may motion the Court to "authorize (A) the deletion of specific items of classified information from documents to be made available to the [accused], (B) the substitution of a portion or summary of the information for classified documents, or (C) the substitution of a statement admitting relevant facts that the classified information would tend to prove." MRE 505(g)(2). The military judge "shall authorize" these alternative forms, unless she determines "the disclosure of the classified information itself is necessary to enable the accused to prepare for trial." Id. If a motion is filed under MRE 505(g)(2), then upon request of

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the United States, the motion "shall" be considered by the military judge *in camera* and "shall not be disclosed to the accused." Id.

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(U) Pursuant to the Court's Order, the prosecution sought out DIA records regarding the accused that involve investigation, damage assessment, or mitigation measures. The prosecution also sought out DIA records subject to discovery or production under Brady, RCM 701(a)(2), RCM 701(a)(6), or RCM 703(f) . See Brady v. Maryland, 373 U.S. 83 (1963). The prosecution identified information that involved investigation, damage assessment, or mitigation measures, or is otherwise subject to discovery or production under Brady, RCM 701(a)(2), RCM 701(a)(6), or RCM 703(f). The DIA reviewed that information to determine if it would authorize the prosecution to voluntarily disclose the original classified material to the defense under MRE 505(g)(1) or (g)(2). The DIA determined that the agency would disclose a majority of information under MRE 505(g)(1) and a limited amount of information in a redacted or summarized form under MRE 505(g)(2). See Enclosure 3. The prosecution disclosed the majority of the information on 3 August 2012 and on 17 August 2012.

[redacted] None of the redacted information is subject to discovery or production under Brady or RCM 701(a)(6). Therefore, the defense is not entitled to discovery of the redacted information.

(U) Should the Court find the redacted information is discoverable, or is "necessary to enable the accused to prepare for trial" under MRE 505(g)(2), then the United States requests the opportunity to either: (1) address the Court's findings with the relevant government agency to

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determine whether a different alterative under MRE 505(g)(2) is appropriate and file that alternative with the Court, or (2) allow for the relevant government agency to claim a privilege under MRE 505(c) and the United States to move for an *in camera* proceeding under MRE 505(i).

(U) The prosecution will not use any redacted portions of the DIA records provided to the Court during any portion of the trial, including in aggravation, if applicable.

CONCLUSION

(U) The United States respectfully requests this Court: (1) consider this motion and the enclosures *in camera* and *ex parte* under MRE 505(g)(2), and (2) authorize redactions of portions of the DIA records that neither involve investigation, damage assessment, or mitigation measures, nor are otherwise subject to discovery or production under Brady, RCM 701(a)(2), RCM 701(a)(6), or RCM 703(f).

ASHDEN FEIN
MAJ, JA
Trial Counsel

Encl
Original DIA Records [redacted]

[redacted]

[redacted]